

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Rulemaking to Establish Rules Governing the)

Unbundling of Services Related to the) D.T.E. 98-32-E

Provision of Natural Gas)

)

SUPPLEMENTAL COMMENTS

OF THE ATTORNEY GENERAL

I. INTRODUCTION

A. Background

By its Notice of Rulemaking, issued on December 17, 1999, the Department of Telecommunications and Energy ("Department") invited comment on its proposed regulations intended to govern the relations between and among gas customers, suppliers and local distribution companies. The Attorney General filed timely Comments on January 28, 2000. The Attorney General now submits for the Department's consideration, Supplemental Comments, as provided for by the Department's ruling at the public hearing on this matter held on February 4, 2000, at the Department's offices.

B. Purpose of the Attorney General's Comments

These Supplemental Comments are submitted for the limited purpose of responding to suggestions by Reliant Energy Retail, Inc. ("Reliant"), [\(1\)](#) made in its comments filed with the Department, that would have the effect of reducing the effectiveness of the consumer protections contained within the proposed regulations. They are not intended to address the comments of other parties. Silence with respect to comments not addressed herein should be taken to mean only that a response was not deemed necessary.

II. COMMENTS

A. Introduction

Reliant's Comments, which the Attorney General addresses herein, can be categorized into two groups: (a) arguments against sections of the proposed regulations containing basic consumer protections, and (b) arguments against the implementation of consumer protections. The basic consumer protections for residential customers in issue concern the time line which must be followed before termination of service can occur and the prohibition on the collection of late payment charges. With respect to implementation, Reliant addresses issues of "receipt," due date, rescission and the release of consumer usage data. Reliant also has proposed changes to the long-standing prohibition against the charging of late payment fees to residential gas customers.

For the reasons stated herein, the Department should reject these suggestions.

B. The Department Should Reject Reliant's Proposals Which Weaken Or Do Away With Basic Consumer Protection Provisions Included In The Proposed Regulations

1. The Department's regulations are meant to prevent consumer abuse

The cornerstone of the Department's rules intended to ensure the fair treatment of residential consumers of energy are found at 220 CMR 25:00 and 26:00. The two basic components of consumer vulnerability safeguarded by the Department's long-standing protections for residential consumers are: (1) time and process, and (2) a prohibition on late payment fees. For almost twenty years, the Department's Billing and Termination Regulations, 220 CMR 25:00, have worked well to protect all residential customers in Massachusetts, including customers of municipalities providing gas and electricity through local municipal light plants. The time line governing the procedures necessary before a company can terminate a customer is precise. For example, a bill must be "due", meaning it was received 45 days prior, before a termination of service notice can be sent to a residential customer, and the notice must be rendered at least 3 days prior to termination.⁽²⁾ The proposed regulations make gas service by a Supplier or marketer subject to these Billing and Termination Regulations.

The regulations of the Department governing late payment charges, 220 CMR 26:00, incorporate a long-standing state policy against the practice of surcharging assessments on unpaid past due portions of a bill for residential consumers of gas, electric, telephone and water companies.⁽³⁾ The proposed regulations extend this protection to residential customers consuming gas.

2. The Intent of the Legislature Is That Consumer Protections Be Enhanced In the Competitive Energy Market

The Massachusetts Great and General Court has spoken clearly with respect to the necessity of, not only preserving, but enhancing consumer protections as the state enters the restructured energy era.

The primary elements of a more competitive electricity market will be customer choice, preservation and augmentation of consumer protections, full and fair competition in generation, and enhanced environmental protection goals.

St. 1997, c. 164, Section 1, (k).

Certainly, with respect to consumer protections, there should be no doubt that the intent of the legislature is to protect equally residential gas and electric customers in the restructured energy industry.

3. Department Precedent Requires Consumer Protections Remain In Place

As part of the Rulemaking process in D.P.U./D.T.E. 96-100 (1998), both Midcon, a Competitive Supplier, and Unitil, the holding company and parent of Fitchburg Gas & Electric Light Co., argued that the Department's consumer protection rules should not apply to Suppliers since they were created to prevent monopoly abuse by investor-owned utilities. Unitil specifically argued that Suppliers should be able to charge residential customers with overdue bills a late fee. Order at 34-36. The Department, in rejecting any change to its billing and termination, and late payment regulations, stated as follows:

...[D]uring the early stages of restructuring, the Department considers it

essential in order to protect customers and to minimize customer confusion that our billing and regulations be applied to competitive suppliers. Similarly, our regulations related to billing deposits and late payment charges should also apply to competitive suppliers, at least during the early stages of restructuring. The Department concludes that the application of these regulations to competitive suppliers is consistent with the requirements of the Act. St. 1997, c. 164, § 193 (G.L. c. 164, § 1F (7)).

Order at 36.

4. Reliant's Suggestions That The Department's Billing and Termination, and Late-Payment Fee, Regulations Be Changed Are Without Merit

a. Late Payment Fees⁽⁴⁾

Reliant requests that the Department do in these regulations what was not done in the electric restructuring regulations: allow the assessment of late payment fees to residential customers. To do this would require not only revising the regulations proposed

here but also revising the Department's existing late payment regulations, 220 CMR 26:00, since there exists no rational basis for treating residential electric customers differently than residential gas customers.

Whether credit card companies can charge late fees has no relevance to whether the Department can or should change its regulations protecting residential customers from late payment fees. Where the General Court has explicitly made clear its intent that

consumer protections for utility customers be enhanced as a result of restructuring, to adopt the position of Reliant would be diametrically contrary to the intent of the legislature and Department policy, and, thus, contrary to the public interest.

b. Customer Receipt of Bills

Reliant maintains that because proposed regulation **.04(3)(c) governing when bills are considered "due" does not define "receipt," the regulation is defective. However, because the regulations clearly incorporate the Department's Billing and Termination regulations, 220 CMR 25.01(1), where receipt is defined, no change is necessary.

c. Due Date

Reliant seeks to change the Department's Billing and Termination Regulations such that it will be able to define when a bill is due rather than utilize the definition of "due" as contained in the 45-day protection against termination afforded by the current and proposed regulations. Uniformity in billing and termination procedures can itself be a means of consumer protection as long as the procedures are fair and appropriate for residential customers. The Department's Billing and Termination procedures have a proven track record of successful protection of those least able to protect themselves against abuse. Consequently, this proposal is clearly inappropriate for residential customers in Massachusetts⁽⁵⁾.

e. Billing and Termination Time Line

Concerned with "breaches of supply contracts" and the amount of time which can elapse before termination is effectuated, Reliant requests the Department to shorten the advance notice requirement for supplier service termination specified in the Model Terms and Conditions from ten days to seven days. Alternatively, Reliant requests that the Supplier be able to terminate customers for non-payment five days sooner than the current Billing and Termination regulations permit.

The Department's present regulations are intended to provide residential customers with the maximum, reasonable amount of time to pay their bills or to resolve disputes. Termination of the provision of a necessity of life, such as heat, is and should be an action taken only in extreme circumstances.

Clearly, either proposal is inappropriate for residential customers and should be rejected accordingly.

f. Release of Customer Usage Information

Reliant references as part of the Appendix a "pre-enrollment" and standardized form which CUBR has developed and which Reliant recommends be used in the "customer acquisition process." Apparently, the forms would allow the LDCs to provide Suppliers with

an individual customer's history regarding such items as load data and payment history. Unfortunately, Reliant served the Attorney General, and presumably all Collaborative members, with a copy of Reliant's Comments that omits the referenced forms.

The Attorney General suggests that the Department reject the concept of the release of customer pre-enrollment data and any negative check-off forms, the latter potentially undermining the requirement of Affirmative Choice.

g. Rescission Period

The proposed language in proposed regulation **.04(4)(d) requires that residential customers and non-residential customers with an annual load less than or equal to 5000 therms, be given three days in which to rescind an affirmative choice of Supplier.⁽⁶⁾

Reliant suggests that because the regulation fails to specify the means the customer must use to exercise its right of rescission, it is exposed to financial uncertainty regarding supply and capacity assets. Reliant also prefers that the LDC be the primary party to handle rescissions, and that they be accomplished by the customer over the telephone, via facsimile or electronically. Reliant does not discuss the possible financial implications to the LDC or who should pay for the LDC as the primary party for this purpose if a cost is incurred.

The regulation as proposed mirrors its counterpart for electricity service rescissions. If the Department intends to follow anti-slamming procedures in the telecommunications industry and the requirement for written authorizations, it should reject Reliant's suggestion.

h. Letter of Authorization

Reliant suggests that the Department change the regulations to permit electronic Letters of Authorization authorizing a Supplier to initiate Supplier Service to a Retail Customer. The

anti-slamming statute in Massachusetts addressing telecommunications slamming, G. L. c. 93,

§ 108, *et seq.*, as well as the Department's anti-slamming regulations, 220 CMR 13:00, have very precise requirements which do not provide for the use of electronic authorizations. The Attorney General does not recommend that the Department vary from the requirements of the analogous law.

I. Complaint and Damage Claim Resolution: Refunds as a Remedy for Unauthorized Service

Reliant argues that, as a matter of fairness, the penalty to a Supplier for the unauthorized initiation of service to a customer, or slamming, should not be based upon the gross revenue the LDC or original Supplier would have received from the Customer during the time the Customer received slammed service, but should be based on the net revenue. The Attorney General supports the use of gross revenues for this purpose since this cost better represents a penalty for

an unfair and deceptive act.

III. CONCLUSION

The protection of those customers least able to protect themselves against utility service abuse is beneficial not only to those customers but to the energy industry as a whole. If a truly competitive energy market is to develop in the state, the Department, in implementing the intent of the legislature, is obligated to shepherd its development through in a way that eliminates chaos, uncertainty and abuse to the greatest degree possible. The consumer protection aspects of the Department's regulations are meant to both inform marketers of behavior which is required, and prohibit and deter behavior which has been determined to be abusive or prone to abuse, thereby protecting consumers and engendering a healthy market for competitive energy. The Department is strongly urged to retain the protections for residential consumers which are contained in the proposed regulations.

Respectfully submitted,

THOMAS F. REILLY

ATTORNEY GENERAL

By: John M. Grugan

Assistant Attorney General

Public Protection Bureau

Regulated Industries Division

200 Portland St., 4th fl.

Boston, MA 02114

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1. Reliant Energy Retail, Inc., a marketer, is part of Reliant Energy, which is based in Houston, Texas and includes in its corporate family three regulated natural gas utilities and a regulated electric utility serving nearly 4 million electric and gas customers in Texas, Arkansas, Louisiana, Oklahoma, Mississippi and Minnesota.
2. Prior attempts to vitiate residential consumer protections, including those relating to telecommunications, have been rebuffed by the Department. See, e.g., *New England Telephone & Telegraph*, D.P.U. 18448-II (1980).
3. See M.G.L. c. 164, § 94D, c. 165, §§ 1B and 4, and c. 159, § 12. Late payment charges to residential customers are also prohibited in parts of California. See Southern California Edison, Rev. Cal. PUC Sheet No. 22960.
4. The headings used are the same headings used by Reliant. Page numbers were not used by Reliant in its Comments.
5. For this same reason, the Department must proceed very cautiously if requested to consider for adoption national, standardized procedures such as the CUBR or Coalition

for Uniform Business Rules which Reliant apparently intends to propose in the future once these guidelines are finalized. Necessary consumer protections available to residential customers of LDC's and competitive sellers of gas in Massachusetts never should be sacrificed in order to

achieve uniformity with practices found appropriate for other jurisdictions.

6. It should be noted that in its Comments filed with the Department, AIM has proposed, that this ceiling be raised to 7000 therms. The Attorney General agrees with this proposal.